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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,787	12/20/2001	Jeffrey E. Fish	KCX-398 (15417)	9570
22827	7590	08/25/2004	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			BEFUMO, JENNA LEIGH	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/027,787	FISH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jenna-Leigh Befumo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Response to Amendment***

1. The Amendment submitted on June 23, 2004, has been entered. Claims 1, 15, and 25 have been amended. Therefore, the pending claims are 1 – 39.
2. The amendment is sufficient to overcome the 35 USC 102 rejection to claims 1 – 6, 10, 13, 25 – 30, 34, 37, and 39 and the 35 USC 103 rejection to claims 7, 8, 12, 14 – 18, 20, 22 – 24, 31, 32, 36 and 38 based on Bjornberg et al. (4,892,535) since Bjornberg et al. does not teach using a liquid-impermeable, vapor permeable backsheet. However, a 103 rejection to these claims based on Bjornberg et al. is set forth below.
3. Further, the amendment is sufficient to overcome the 35 USC 103 rejection to claims 1 – 8, 10, 12 – 18, 20, 22 – 32, 34, and 36 – 39 based on Baer et al. (5,938,650) since Baer et al. fails to teach using a liquid-impermeable, vapor permeable backsheet. However, a 103 rejection to these claims is set forth below.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1 – 10, 12 – 20, 22 – 35, and 37 – 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bjornberg et al. in view of Tanzer et al. (5,411,497).

The features of Bjornberg et al. and Tanzer et al. have been set forth in the previous Office Action. The claims have been amended to include the limitation that one of the outer layers is impermeable to liquids and permeable to gases. This new limitation is similar to the limitation in claims 9, 19, and 33, only slightly broader. Therefore, these claims are now

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rejected over Bjornberg et al. in view of Tanzer et al. for the same reasons claims 9, 19, and 33 were rejected in the previous Office Action.

6. Claims 1 – 10, 12 – 20, and 22 – 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al. in view of Tanzer et al.

The features of Baer et al. and Tanzer et al. have been set forth in the previous Office Action. The claims have been amended to include the limitation that one of the outer layers is impermeable to liquids and permeable to gases. This new limitation is similar to the limitation in claims 9, 19, and 33, only slightly broader. Therefore, these claims are now rejected over Baer et al. in view of Tanzer et al. for the same reasons claims 9, 19, and 33 were rejected in the previous Office Action.

7. Claims 25 – 34 and 36 – 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al. and Tanzer et al. as applied above, and further in view of Bjornberg et al.

The features of Baer et al. and Tanzer et al. have been set forth above. Baer et al. fails to teach using a vacuum or suctional force to apply the particles to the substrate. Bjornberg et al. discloses that the pockets can be formed by with vacuum to create pockets which would assist with the application of the particles. As shown in Figure 5, the vacuum forming the nonwoven material produces uniform pockets which hold the particles in the pockets resulting in a more uniform pocket size and particle amount per pocket. Thus, it would have been obvious to one of ordinary skill in the art to vacuum form pockets in the laminate produced by Baer et al. because vacuum forming is a known method to create pockets that hold particles. Also using vacuum form pockets would give the manufacturer more control over the placement of the pockets and the particles in the pockets. In other words, the particles won't be spilling out of the pocket

of the pocket before the two layers are bonded together and the pockets will have a more uniform size. Therefore, claims 25 – 34 and 36 – 39 are rejected.

8. Claims 11, 21, and 35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bjornberg et al. and Tanzer et al. as applied to claims 1, 15, and 25 above, and in further view of Taylor et al. (5,332,613).

The rejection has been changed to reflect the fact that the independent claims are now rejected over Bjornberg et al. and Tanzer et al. However, claims 11, 21, and 35 are still rejected for the reasons of record.

9. Claims 11 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al. and Tanzer et al. as applied to claims 1 and 15 above, and in further view of Taylor et al. (5,332,613).

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al., Tanzer et al., and Bjornberg et al. as applied to claim 25 above, and in further view of Taylor et al.

The rejection has been changed to reflect the fact that the independent claims are now rejected over Baer et al., Tanzer et al., and Bjornberg et al. However, claims 11, 21, and 35 are still rejected for the reasons of record.

#### ***Response to Arguments***

10. Applicant's arguments filed June 23, 2004 have been fully considered but they are not persuasive. The Applicant argues that Bjornberg et al. fails to teach using textured substrates with elevations and depressions (response, pages 10 – 11). First, it is noted that this is a limitation directed to the shape of the material before it is laminated. However, patentable

weight is only given to the shape of the product in the final form. Hence, the prior art does not need to start out with textured outer layers as long as the final product has the claimed elevations and depressions. As set forth in the previous Office Action, the bottom layer taught by Bjornberg et al. will not stay completely flat, but will bulge out due to the presence of the particles, inherently forming elevations and depressions in the final product. The backing layer does not need to have a textured form before the laminate is produced since the Applicant is claiming the laminate in the final form. Therefore, the rejection is maintained.

11. The Applicant argues that Baer et al. is not a sufficient reference since Baer et al. does not teach using liquid impermeable, breathable substrate layers and using suction to form the pockets (response, pages 12 – 13). However, these new limitations have been addressed above. Thus, the rejections are maintained.

Further, the Applicant states that the prior art references must be viewed as a whole and cannot be viewed in a vacuum (response, page 13). And when the prior art and the present invention are viewed as a whole there is simply no motivation to produce the claimed invention. However, it is not clear what applicant is basing this statement on when the prior art, particularly Baer et al. produces a final product which is described with almost identical figures to the applicant's own Figure 1C. Thus, it is felt that the prior art references as a whole teach provide sufficient motivation to render obvious the claimed invention.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jenna-Leigh Befumo  
August 17, 2004



CHERYL A. JASKA  
PRIMARY EXAMINER